

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL NO. 3:08CV29-03-V  
(3:01CR202-V)**

<b>ALBERT ESPOSITO,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
<b>Respondent.</b>	)	
_____	)	

**ORDER**

**THIS MATTER** is before the Court on the Petitioner’s Motion for a Certificate of Appealability, filed June 22, 2009 (Doc. No. 28.).

Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 on January 25, 2008. (Doc. No. 1.) This Court denied Petitioner’s Motion to Vacate and granted the Government’s Motion for Summary Judgment by Order dated April 2, 2009. (Doc. No. 23.) On April 28, 2009 Petitioner filed a document styled “Petition for a Certificate of Appealability which this Court construed as a Notice of Appeal and forwarded the same to the Fourth Circuit Court of Appeals. Petitioner now contends that he intended that this Court issue a certificate of appealability in his case pursuant to 28 U.S.C. § 2253.

Title 28 U.S.C. § 2253 directs that a certificate of appealability may be issued by a circuit justice or judge. In this case, in light of the fact that Petitioner’s prior filing was construed as a Notice of Appeal and as such the record in this case is before the Fourth Circuit, this Court directs that Petitioner’s Application for Certificate of Appealability be transmitted as a supplement to the Fourth Circuit for consideration by that Court.

**THEREFORE, IT IS HEREBY ORDERED** that Petitioner's Application for a Certificate of Appealability should be forwarded to the Fourth Circuit as a supplement for consideration by the Fourth Circuit in conjunction with Petitioner's appeal of this Court's denial of his Motion to Vacate.

**SO ORDERED.**

Signed: June 29, 2009

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees  
United States District Judge

